IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 6202 of 2005(L)

PETITIONERS:

ABOVE 50 PARTIES

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESETNED BY ITS SECRETARY, INDUSTRIES DEPARTMENT, THIRUVANANTHAPURAM.

2. THE KERALA STATE DRUGS AND PHARMACECUTICLS LIMITED, KALAVOOR, ALAPPUZHA, REPRESENTED BY ITS MANAGING DIRECTOR.

R1 BY GOVT. PLEADER SHRI.P.NANDAKUMAR.
R2 BY ADV. SRI.P.R.RAMACHANDRA MENON SC KSDP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/01/2007 ALONG WITH WP(C).NO.7414/2005 AND OTHER CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Petitioners' Exhibits:-

P1: Copy of the notice dtd.14-10-2003 issued by the 2nd respondent.

P2: Copy of the VRS Scheme in public sector undertakings stipulated under Government Circular of 17-11-1995.

P3: Copy of Gopvernment Order dtd.21-7-2004.

P4: Copy of representation dtd.10-9-1994 submitted by the petitioners before the 2nd respondent.

P5: Copy of general notice dtd.30-9-2003 issued by the 2nd respondent.

P6: Copy of relieving letter dtd.30-9-2003 issued by the 2nd respondent.

P7: Copy of representation dtd.30-9-2004 from the petitioners to the 2nd respondent.

P8: Copy of representation dtd.29-11-2004 from the petitioners to the 2nd respondent.

RESPONDENTS' EXHIBITS:- Nil.

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P.A. To Judge.

kvs/-

K.K.DENESAN, J.

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WP(C).Nos.6202, 7415, 10021, 10040,
10064, 19610 & 23723 OF 2005.

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Dated this the 25th day of January, 2007.

J U D G M E N T

The petitioners in this batch of writ petitions have a common grievance. The questions for consideration are identical. Hence these writ petitions are proposed to be disposed of by this common judgment.

2. The petitioners are the former employees of the Kerala State Drugs and Pharmaceuticals Ltd; (hereinafter referred to as 'the Company'), a public sector undertaking fully owned and controlled by the Government of Kerala.

3. By Ext.P1 notice dated 14-10-2003, the Company announced its intention to submit a proposal to the Government for the introduction of Voluntary Retirement Scheme ('VRS' for short) for its employees in tune with the VRS scheme in other public sector undertakings, published as per Government Circular dated 17-11-1995. Ext.P2 is the VRS scheme published along with the

Circular dated 17-11-1995. The Company has been running at loss for years together. So much so, even the payment of salary and other benefits to the employees had been erratic. The petitioners submitted applications for availing the benefit of VRS scheme.

4. Meanwhile, M/s.Hindustan Latex Ltd; expressed its willingness to take over the production facilities of the Company. After detailed discussion, Government accrued sanction vide Ext.P3 Government order. By the same order Government granted sanction for implementation of VRS scheme in the Company. In furtherance of Ext.P3, the Company took a decision to relieve the petitioners from service and disburse the VRS benefits on receipt of funds from the Government. The petitioners filed representations requesting the Company to ensure that they are paid the full benefits in the VRS scheme before they would cease to be in service. But the Company by its general notice dated 30-9-2004 announced that all the employees who had applied for the VRS scheme were being relieved from service on the said date. In addition to the above

notice, the employees were issued relieving letters stating that they will be paid voluntary retirement benefits based on their salary and services as on 31-12-2003, and that the payment will be effected as soon as funds are made available from the Government. The petitioners objected to the course adopted by the respondents.

5. By Government order dated 12-10-2004 the Government sanctioned Rs.6,63,77,255/- to the Company for payment of VRS compensation, gratuity and Provident Fund. Consequential ex-gratia amount under the scheme as on 31-12-2003 was released to them. The credited amount was calculated based on the salary as on 31-12-2003. The petitioners would contend that notice payable as per Ext.P1 represents salary for the period 1-11-2003 to 30-9-2004 and arrears of pay on account of the long term settlement have been withheld by the Company. So also, the leave salary and medical reimbursement benefits have not been disbursed. At the same time, an amount equivalent to the bonus paid during year 1998-1999 and 1999-2000 were recovered from

the ex-gratia paid. The petitioners filed representations. But it did not evoke any favourable response.

6. In the above facts and circumstances, the petitioners have approached this Court. They have sought for a direction to the respondents to re-calculate the ex-gratia payment and the gratuity in pursuance of Ext.P3 based on the service conditions and monthly emoluments due to the petitioners as on 30-9-2004 and to disburse the arrears forthwith. They have also sought for a writ of mandamus directing the respondents to disburse the salary of the petitioners for the period 1-11-2003 to 30-9-2004, leave salary, medical reimbursement, arrears on account of the long term settlement of 1990-2000, notice pay, ex-gratia payment, gratuity and provident fund as provided in Ext.P1.

7. The 2nd respondent has filed a counter-affidavit. It is stated that the Company had been facing acute shortage of funds and to tide over the situation, the Board of Directors of the Company

decided to submit a proposal to the Government for VRS and invited applications from the employees. It was under the above circumstances, Ext.P1 was published. According to the Company, reference to Ext.P2 is irrelevant. It is stated that the scheme as shown in Ext.P3 was implemented for the Company only, which was in operation upto 30-4-1994, and those who had opted for that were relieved on 30-6-1995. But the VRS scheme floated by the Company on 14-10-2003 was actually based on Government Circular dated 17-11-1995. The statement made by the petitioners that the Company had taken a decision to relieve the petitioners immediately on receipt of Government order dated 21-7-2004 has been denied, as not correct. The Company expected that at least the first instalment (VRS, ex-gratia, gratuity and provident fund) could be released before the retirement would actually take place. But it did not happen. The Board of Directors of the Company decided to wait upto 30-9-2004 for relieving the petitioners and other applicants even though they could have been relieved in July, 2004 itself. The

Company asserts that the cut off date for accepting VRS was 31-12-2003 and the Government had also accepted and approved the proposal of the Company taking 31-12-2003 as the cut off date. Of course, the applicants who had opted for VRS were relieved only on 30-9-2004. The counter-affidavit deals with the claim made by the petitioners under various items and states that the amounts legitimately due will be released to the petitioners.

8. On a consideration of the contentions of the petitioners on the one hand and the contentions of the respondent Company on the other, I am of the opinion that the challenge made by the petitioners to the cut off date cannot be sustained. Claims made by the petitioners for leave salary, medical reimbursement, arrears on account of LTS of 1990-2000, notice pay, exgratia payment, gratuity, provident fund, etc., will have to be worked out accepting 31-12-2003 as the cut off date. However, those who had rendered service till 30-9-2004, shall have to be paid remuneration upto that date.

9. These writ petitions are disposed of sustaining the cut off date as 31-12-2003. Ext.P2 in WP(C).No.6202 of 2005 contains the particulars of the claims. Necessary funds shall be provided by the Government within two months. On issuing the funds, the Company shall release the amount within two weeks thereafter. Since the petitioners were not relieved with effect from 31-12-2003 but were retained and made to serve the Company upto 30th September, 2004, they are entitled to claim salary upto 30-9-2004 at the same rates they were drawing as on 31-12-2003. The arrears of salary shall be worked out and paid to the petitioners along with amounts due under the Voluntary Retirement Scheme.

With the above observations and directions, these writ petitions are disposed of.

K.K.DENESAN, JUDGE.

kvs/-